

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF AMERICAN
TELECOMMUNICATIONS ENTERPRISE, INC.'S
FAILURE TO REMIT THE COMMISSION'S 2002
REGULATORY FEE PURSUANT TO *IDAHO
CODE* §§ 61-1001 AND 62-611.**

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) **CASE NO. GNR-U-03-3**
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**IN THE MATTER OF ARRIVAL
COMMUNICATIONS, INC.'S FAILURE TO
REMIT THE COMMISSION'S 2002
REGULATORY FEE PURSUANT TO *IDAHO
CODE* §§ 61-1001 AND 62-611.**

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**IN THE MATTER OF COLORADO RIVER
COMMUNICATIONS CORP.'S FAILURE TO
REMIT THE COMMISSION'S 2002
REGULATORY FEE PURSUANT TO *IDAHO
CODE* §§ 61-1001 AND 62-611.**

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) **ORDER NO. 29215**
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**IN THE MATTER OF COMPLUS, L.L.C.'S
FAILURE TO REMIT THE COMMISSION'S 2002
REGULATORY FEE PURSUANT TO *IDAHO
CODE* §§ 61-1001 AND 62-611.**

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**IN THE MATTER OF CORRECTIONAL
COMMUNICATIONS SYSTEMS OF IDAHO,
L.L.C.'S FAILURE TO REMIT THE
COMMISSION'S 2002 REGULATORY FEE
PURSUANT TO *IDAHO CODE* §§ 61-1001 AND 62-
611.**

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**IN THE MATTER OF CYBERSENTRY, INC.'S
FAILURE TO REMIT THE COMMISSION'S 2002
REGULATORY FEE PURSUANT TO *IDAHO
CODE* §§ 61-1001 AND 62-611.**

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**IN THE MATTER OF FAXNET CORPORATION'S
FAILURE TO REMIT THE COMMISSION'S 2002
REGULATORY FEE PURSUANT TO *IDAHO
CODE* §§ 61-1001 AND 62-611.**

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IN THE MATTER OF FEDERAL TRANSTEL,)
INC.'S FAILURE TO REMIT THE)
COMMISSION'S 2002 REGULATORY FEE)
PURSUANT TO *IDAHO CODE* §§ 61-1001 AND 62-)
611.)

IN THE MATTER OF GF ENTERPRISES')
FAILURE TO REMIT THE COMMISSION'S 2002)
REGULATORY FEE PURSUANT TO *IDAHO*)
CODE §§ 61-1001 AND 62-611.)

IN THE MATTER OF RUTH & TARA)
MILLWARD'S FAILURE TO REMIT THE)
COMMISSION'S 2002 REGULATORY FEE)
PURSUANT TO *IDAHO CODE* §§ 61-1001 AND 62-)
611.)

IN THE MATTER OF MIRACLE)
COMMUNICATIONS, INC.'S FAILURE TO)
REMIT THE COMMISSION'S 2002)
REGULATORY FEE PURSUANT TO *IDAHO*)
CODE §§ 61-1001 AND 62-611.)

IN THE MATTER OF NEXSTAR)
COMMUNICATIONS INC.'S FAILURE TO)
REMIT THE COMMISSION'S 2002)
REGULATORY FEE PURSUANT TO *IDAHO*)
CODE §§ 61-1001 AND 62-611.)

IN THE MATTER OF NOR COMMUNICATIONS,)
INC.'S FAILURE TO REMIT THE)
COMMISSION'S 2002 REGULATORY FEE)
PURSUANT TO *IDAHO CODE* §§ 61-1001 AND 62-)
611.)

IN THE MATTER OF OVERLOOK)
COMMUNICATIONS INTERNATIONAL)
CORPORATION'S FAILURE TO REMIT THE)
COMMISSION'S 2002 REGULATORY FEE)
PURSUANT TO *IDAHO CODE* §§ 61-1001 AND 62-)
611.)

IN THE MATTER OF PTT TELEKOM, INC.'S)
FAILURE TO REMIT THE COMMISSION'S 2002)
REGULATORY FEE PURSUANT TO *IDAHO*)
CODE §§ 61-1001 AND 62-611.)

IN THE MATTER OF QUEST)
TELECOMMUNICATIONS, INC.'S FAILURE TO)
REMIT THE COMMISSION'S 2002)
REGULATORY FEE PURSUANT TO *IDAHO*)
CODE §§ 61-1001 AND 62-611.)

IN THE MATTER OF SMITTY'S PUB'S FAILURE)
TO REMIT THE COMMISSION'S 2002)
REGULATORY FEE PURSUANT TO *IDAHO*)
CODE §§ 61-1001 AND 62-611.)

IN THE MATTER OF TELCOM NETWORK)
INC.'S FAILURE TO REMIT THE)
COMMISSION'S 2002 REGULATORY FEE)
PURSUANT TO *IDAHO CODE* §§ 61-1001 AND 62-)
611.)

IN THE MATTER OF TELEHUB NETWORK)
SERVICES CORPORATION'S FAILURE TO)
REMIT THE COMMISSION'S 2002)
REGULATORY FEE PURSUANT TO *IDAHO*)
CODE §§ 61-1001 AND 62-611.)

IN THE MATTER OF TELTRUST)
COMMUNICATIONS SERVICES, INC.'S)
FAILURE TO REMIT THE COMMISSION'S 2002)
REGULATORY FEE PURSUANT TO *IDAHO*)
CODE §§ 61-1001 AND 62-611.)

IN THE MATTER OF TOUCHTONE NETWORK,)
INC.'S FAILURE TO REMIT THE)
COMMISSION'S 2002 REGULATORY FEE)
PURSUANT TO *IDAHO CODE* §§ 61-1001 AND 62-)
611.)

IN THE MATTER OF USA TELE CORP.'S)
FAILURE TO REMIT THE COMMISSION'S 2002)
REGULATORY FEE PURSUANT TO *IDAHO*)
CODE §§ 61-1001 AND 62-611.)

IN THE MATTER OF USBG, INC.'S FAILURE TO)
REMIT THE COMMISSION'S 2002)
REGULATORY FEE PURSUANT TO *IDAHO*)
CODE §§ 61-1001 AND 62-611.)

**IN THE MATTER OF VISTA GROUP)
INTERNATIONAL, INC.'S FAILURE TO REMIT)
THE COMMISSION'S 2002 REGULATORY FEE)
PURSUANT TO *IDAHO CODE* §§ 61-1001 AND 62-)
611.)**

**IN THE MATTER OF WEST END)
COMMUNICATIONS INC.'S FAILURE TO)
REMIT THE COMMISSION'S 2002)
REGULATORY FEE PURSUANT TO *IDAHO)
CODE* §§ 61-1001 AND 62-611.)**

**IN THE MATTER OF WESTERN STATE PAY)
PHONES' FAILURE TO REMIT THE)
COMMISSION'S 2002 REGULATORY FEE)
PURSUANT TO *IDAHO CODE* §§ 61-1001 AND 62-)
611.)**

On January 27, 2003, the Commission issued Order No. 29185 directing American Telecommunications Enterprise, Inc.; Arrival Communications, Inc.; Colorado River Communications Corp.; Complus L.L.C.; Correctional Communications Systems of Idaho, L.L.C.; Cybersentry, Inc.; Faxnet Corporation; Federal Transtel, Inc.; GF Enterprises, Miracle Communications, Inc.; Nexstar Communications Inc.; NOR Communications, Inc.; Overlook Communications International Corporation; PTT Telekom, Inc.; Quest Telecommunications, Inc.; Ruth & Tara Millward; Smitty's Pub; Telcom Network Inc.; Telehub Network Services Corporation; Teltrust Communications Services, Inc.; Touchtone Network, Inc.; USA Tele Corp.; USBG, Inc.; Vista Group International, Inc.; West End Communications Inc.; and Western State Pay Phones ("the Companies") to show cause why they have not paid their respective \$50.00 regulatory fees for 2002 as required by *Idaho Code* §§ 61-1001 and 62-611. In addition, the Order also alleged that these Companies had failed to report their 2001 intrastate operating revenues as required by *Idaho Code* § 61-1003. Although the 26 Companies were ordered to appear before the Commission's Hearing Examiner on February 26, 2003, none of the Companies appeared at the hearing.

Having reviewed the evidence presented at the Show Cause hearing and the Hearing Examiner's recommendations, we order 24 of the 26 Companies to cease conducting business in Idaho and direct other Idaho local exchange companies (LECs) to not carry these Companies'

telecommunications traffic. The tariffs/price lists of these 24 companies shall be cancelled unless their delinquent regulatory fees are paid within 21 days of the service date of this Order.

BACKGROUND

The Commission's Regulatory Fee

Idaho Code §§ 61-1001 and 62-611 provide that each public utility subject to the Commission's Title 61 or Title 62 jurisdiction shall pay to the Commission a special regulatory fee "to defray the amount to be expended by the commission for expenses in supervising and regulating the public utilities." On or before April 1 of each year, each public utility is required to report its gross operating revenue from intrastate business in Idaho for the preceding calendar year. *Idaho Code* § 61-1003. Based upon all the utilities' gross intrastate revenues and the Commission's annual appropriation from the Legislature, the Commission then calculates the proportional assessment to be paid by each utility. Thereafter, each utility pays its regulatory assessment to the Commission in two equal semi-annual installments on or before May 15 and November 15 of each year. *Idaho Code* § 61-1005. "Upon failure, refusal or neglect of any public utility or railroad corporation to pay such fee the attorney general shall commence an action in the name of the state to collect the same." *Id.* This section further provides that installments not paid in a timely fashion shall bear interest at the rate of 6% until such time as the full amount of the installment or annual fee is paid. *Idaho Code* § 61-1004(3) sets the minimum annual regulatory fee at \$50.00.

In this case, the Commission Staff alleged that 26 Title 62 Companies failed to report their gross intrastate revenues for calendar year 2001 and failed to pay their 2002 regulatory fees. Order No. 29185 at 5-6. The Staff presented the prefile testimony of its financial support technician, Christine Adams. She testified concerning the assessment procedures and the Staff's efforts to obtain the 2001 gross revenues and to collect the 2002 regulatory assessments from the Companies.

THE SHOW CAUSE HEARING

A. Staff Motion to Remove Parties from the Proceeding

Staff made a preliminary motion to remove Arrival Communications, Inc. and Miracle Communications, Inc. from the show cause proceeding. Staff's counsel indicated that Arrival Communications previously requested the Commission remove its price lists and tariffs from the Commission's records. Tr. at 2-3. Because the Commission had already done so, Staff no longer sought an Order against Arrival Communications. Counsel for Staff also indicated Miracle

Communications should no longer be required to show cause in this proceeding because it had recently come into compliance with the Commission's reporting and assessment requirements. Tr. at 3. Staff proceeded to present testimony on the remaining 24 companies named in show cause Order No. 29185.

***B. Designating Persons to Receive Service and
Mail Issued by the Commission Secretary***

Ms. Adams first testified that *Idaho Code* § 62-619 provides that the Commission's Rules of Procedure apply to the processing of Title 62 matters. She stated that the Commission's Procedural Rule 16 provides that the Commission Secretary shall serve all Orders by mail. IDAPA 31.01.01.016.01. Tr. at 11. This Rule requires that all "utilities must maintain on file with the Commission Secretary a designation of such a person. Summonses and complaints directed to regulated utilities . . . may be served by registered or certified mail." Tr. at 11 *citing* IDAPA 31.01.01.016.02.

Staff witness Adams also testified that Title 62 Rule 202 requires that each Title 62 corporation provide the Commission with "address of the principal place of business of the telephone corporation, and, if there is a principal place of business in Idaho, the address of the principal place of business in Idaho; [and an] agent in Idaho for service to process by the Commission in the state of Idaho." IDAPA 31.42.01.202.02(b) and (c). Tr. at 10. She also noted that Rule 202.03 provides that "orders and other documents issued by the Commission may be served by mail on the agent for service of process listed pursuant to Rule 202.01(c) of this rule. This service constitutes due and timely notice to the telephone corporation, and no further service is necessary to bind the corporation." Tr. at 10 *citing* IDAPA 31.42.01.202.03. *Idaho Code* § 61-615 allows complaints against utilities to be served by registered mail. All the Orders and correspondence sent to the 24 companies at issue in this case were sent to the addresses on file with the Commission.

***C. The Companies' Failure to Report Their Gross Revenues
and the Staff's Efforts to Collect the Regulatory Fees***

1. Reporting 2001 Revenues. On February 8, 2002, a letter was mailed to each of the companies asking them to report their respective 2001 gross intrastate revenues on or before April 1, 2002. The 24 companies at issue did not respond to this letter nor did they otherwise report their 2001 gross operating revenues as required by *Idaho Code* §§ 61-1003 and 62-611.

2. 2002 Fees. Ms. Adams outlined the measures taken by the Staff to collect the 2002 regulatory fees from the Companies. She reported that on April 22, 2002, the Commission Staff forwarded an assessment statement to the 24 Companies advising them of their annual \$50.00 regulatory fee, of which \$25.00 was due and payable no later than May 15, 2002. Again in October 2002, the 24 Companies were sent a letter claiming that the first installments were not received. The letter advised each Company that \$25.57 was due or the Company could pay their entire 2002 regulatory assessment of \$50.57 no later than October 30, 2002. As of February 24, 2003, none of the 24 Companies had paid its 2002 fees.

3. Notice of Show Cause Order. Ms. Adams next stated that each Company was served a copy of Show Cause Order No. 29185 by certified mail. The post office's mail receipts showed that the Companies did not receive their copy of the Commission's Show Cause Order No. 29185 because the address was undeliverable and/or the post office was unable to forward them.

4. Staff Recommendation. None of the 24 Companies appeared at the Show Cause hearing. Tr. at 2 and 79. Ms. Adams recommended that the Hearing Examiner enter default judgments against these Companies for failing to report their 2001 intrastate gross revenues, failing to pay their 2002 regulatory fee, and failing to appear at the Show Cause hearing. Tr. at 75. She further recommended that the Commission order these Companies to cease operating in Idaho until they have come into compliance by paying the appropriate regulatory fees. In addition, she suggested that the Commission direct local exchange companies to deny or prohibit the interconnection or carriage of traffic for these Companies. Finally, Ms. Adams recommended that their price lists be removed from the Commission's files and their certificates cancelled if the Companies failed to pay their delinquent regulatory fees. *Id.* at 75-76.

D. The Hearing Examiner's Findings and Recommendations

Because the actions of Arrival Communications and Miracle Communications negated the need for further proceedings, the Hearing Examiner recommended that the Commission delete these two companies from any eventual default order. Tr. at 3.

Having reviewed the testimony filed by Staff witness Adams, the Hearing Examiner found that the Commission Secretary affected proper service of Show Cause Order No. 29185 by regular and certified mail upon the 24 Companies at their designated business and agent addresses. Tr. at 79-80. Even though Order No. 29185's language advised the Companies of the potential penalties the Commission could impose for failing to show cause or remedy their alleged

noncompliance, he found that no parties appeared at the Show Cause hearing. Tr. at 80. Based on the testimony of Staff's witness, the Hearing Examiner found that these 24 Companies neither reported their 2001 revenues, nor paid their 2002 regulatory fees as required by the *Idaho Code*. Tr. at 79-81. Moreover, none of the Companies were properly registered with the Secretary of State. Tr. at 80.

Thus, the Hearing Examiner recommended that the Commission enter default judgments against the 24 Companies. Tr. at 81. He also recommended that the Commission issue an Order advising other Title 61 or Title 62 companies not to carry these Companies' traffic if they do not come into compliance before the Order becomes final, 21 days after the Order's service date. *Id.* Moreover, the Commission should cancel the Certificates allowing these Title 62 Companies to provide local service and remove their price lists and tariffs from the Commission's files. Tr. at 82. Finally, the Hearing Examiner recommended that the Commission issue an Order directing these Companies to cease conducting business in Idaho. *Id.*

COMMISSION FINDINGS

Having reviewed the evidence presented at the Show Cause hearing and the Hearing Examiner's recommendations, we find that American Telecommunications Enterprise, Inc.; Colorado River Communications Corp.; Complus L.L.C.; Correctional Communications Systems of Idaho, L.L.C.; Cybersentry, Inc.; Faxnet Corporation; Federal Transtel, Inc.; GF Enterprises; Nexstar Communications Inc.; NOR Communications, Inc.; Overlook Communications International Corporation; PTT Telekom, Inc.; Quest Telecommunications, Inc.; Ruth & Tara Millward; Smitty's Pub; Telcom Network Inc.; Telehub Network Services Corporation; Teltrust Communications Services, Inc.; Touchtone Network, Inc.; USA Tele Corp.; USBG, Inc.; Vista Group International, Inc.; West End Communications Inc.; and Western State Pay Phones have failed to report their 2001 gross intrastate operating revenues and have failed to pay their 2002 regulatory fees as required by *Idaho Code* §§ 61-1003, 61-1005, and 62-611. We find that the assessment letters, collection letters, and Order No. 29185 were properly served by regular mail and certified mail to the person(s) designated by these Title 62 Companies to receive correspondence, summonses and Orders of the Public Utilities Commission. IDAPA 31.01.01.016; 31.42.01.202. The Commission has jurisdiction over these Companies and this matter pursuant to *Idaho Code* § 62-611 and Chapter 10, Title 61, Idaho Code.

Based upon the recommendation of our Hearing Examiner, we further find that it is appropriate to enter default judgments against these twenty-four companies for their failure to appear at the Show Cause hearing. IDAPA 31.01.01.301. It is unreasonable for these Companies to be allowed to operate in Idaho without paying their regulatory fees. Failure to report their gross intrastate operating revenues and failure to pay their regulatory fees unfairly burdens the remaining companies that are in compliance with the Public Utilities Laws. Moreover, the Companies' failure to appear at the Show Cause hearing pursuant to an Order of this Commission calls into question their ability to comply with the Public Utilities Laws and administrative Rules of this Commission. It is evident from the testimony of our financial technician that considerable resources and Staff time were expended trying to collect the delinquent regulatory fees.

Finally, we also believe it is reasonable that these Companies be directed to cease operating in Idaho and that incumbent and competitive local exchange companies be ordered not to transmit any traffic for these Companies. Given the failure of these 24 Companies to pay their regulatory fees as required by law, we also believe it is appropriate to cancel their tariffs and price lists and remove them from the Commission's files. Although we believe that these Companies have been given ample opportunity to comply with the regulatory fee statutes, we believe it is appropriate for this Order to become effective 21 days from the service date of this Order. If prior to the effective date of this Order the Companies come forward to pay their delinquent regulatory fees, we believe that it would be appropriate for the Companies and the Commission Staff to enter into a consent agreement pursuant to Procedural Rule 58, IDAPA 31.01.01.058. As noted in the Rule, "[c]onsent agreements are intended to require compliance with existing law." *Id.* The Commission further finds it reasonable to dismiss the show cause proceedings against Arrival Communications and Miracle Communications, both of which reached agreements prior to the hearing to resolve alleged noncompliance issues.

ORDER

IT IS HEREBY ORDERED that American Telecommunications Enterprise, Inc.; Colorado River Communications Corp.; Complus L.L.C.; Correctional Communications Systems of Idaho, L.L.C.; Cybersentry, Inc.; Faxnet Corporation; Federal Transtel, Inc.; GF Enterprises; Nexstar Communications Inc.; NOR Communications, Inc.; Overlook Communications International Corporation; PTT Telekom, Inc.; Quest Telecommunications, Inc.; Ruth & Tara Millward; Smitty's Pub; Telcom Network Inc.; Telehub Network Services Corporation; Teltrust

Communications Services, Inc.; Touchtone Network, Inc.; USA Tele Corp.; USBG, Inc.; Vista Group International, Inc.; West End Communications Inc.; and Western State Pay Phones are in default for failure to report their 2001 gross intrastate revenues and to pay their 2002 regulatory fees pursuant to *Idaho Code* §§ 61-1001, 61-1003, 61-1005, and 62-611.

IT IS FURTHER ORDERED that this Order shall become effective 21 days from the service date of this Order. When this Order becomes effective, the 24 Companies named above shall cease operating in Idaho.

IT IS FURTHER ORDERED that 25 days after the service date of this Order, that incumbent and competitive local exchange companies shall no longer originate or terminate intrastate traffic for these Companies.

IT IS FURTHER ORDERED that upon the effective date of this Order the tariffs and price lists for these 24 Companies shall be cancelled for failure to pay their 2002 regulatory fees.

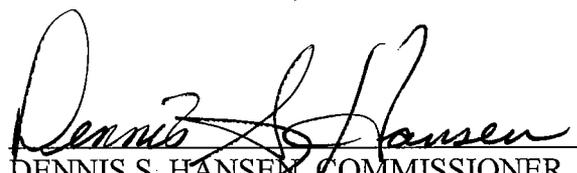
IT IS FURTHER ORDERED that the show cause proceedings against Arrival Communications, Inc. and Miracle Communications, Inc. are hereby dismissed.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. GNR-U-03-3 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this order or in interlocutory Orders previously issued in this Case No. GNR-U-03-3. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

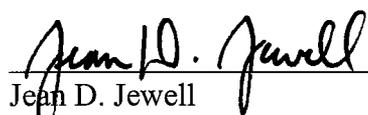
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 27th
day of March 2003.


PAUL KJELLANDER, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


DENNIS S. HANSEN, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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